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No. 88-2010

In the Supreme Court of the United States

OCTOBER TERM, 1988

ROBERT WILLIAM ROY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends that the court of appeals erred in reversing an order suppressing evidence that the Coast Guard seized from a vessel on the high seas.

1. On August 26, 1987, petitioner was indicted by a federal grand jury in the Southern District of Florida. He was charged with conspiracy to possess with intent to distribute at least 100 kilograms of marijuana while on board a United States vessel, in violation of 46 U.S.C. App. 1903(j) (Supp. V 1987), and possession with intent to distribute at least 100 kilograms of marijuana while on board a United States vessel, in violation of 46 U.S.C. App. 1903(a) (Supp. V 1987).

The charges against petitioner arose from events that occurred on August 14, 1987. On that day, the Coast Guard stopped and boarded a vessel on the high seas that was owned by petitioner. The marijuana that is the subject

of the indictment was seized following a second boarding of the vessel. The second boarding occurred two and one-half hours after the first boarding, when Coast Guard officers realized they had overlooked a compartment on the vessel during the inspection that was conducted at the time of the first boarding.

Petitioner filed a motion to suppress the evidence seized during the second boarding. He contended that the Coast Guard lacked probable cause to conduct a second search of a vessel on the high seas. The district court granted the motion to suppress. Pet. App. 36-60. The court concluded that although the first boarding and search of the vessel by the Coast Guard was proper as a safety and document inspection under the authority of 14 U.S.C. 89(a), the second search was unlawful and violated the Fourth Amendment.

2. The court of appeals reversed. Pet. App. 1-35. The court ruled that the district court was not clearly erroneous in finding that the Coast Guard's document and safety inspection under 14 U.S.C. 89(a) was completed during the first boarding. The court held, however, that the Coast Guard had probable cause to conduct the second search, and that the search therefore did not violate the Fourth Amendment.

3. Petitioner contends (Pet. 21-31) that the Coast Guard did not have probable cause to conduct the search. Whatever the merits of petitioner's contention, it is not presently ripe for review by this Court. The court of appeals' decision places petitioner in precisely the same position he would have occupied if the district court had denied his motion to suppress. If petitioner is acquitted following a trial on the merits, his current contention will be moot. If, on the other hand, petitioner is convicted and his conviction is affirmed on appeal, he will then be able to present his current contention, together with any other

claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.*

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

KENNETH W. STARR
Solicitor General

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* Because this case is in an interlocutory posture, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.

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